IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 816 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 817 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 850 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 851 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 886 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 887 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 888 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 895 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 896 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 897 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 898 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 904 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 905 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 912 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 918 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 919 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 920 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH
INCOME TAX APPEAL NO. 931 OF 2000
The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH

INCOME TAX APPEAL NO. 948 OF 2000

The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

WITH

INCOME TAX APPEAL NO. 949 OF 2000

The Commissioner of Income Tax, Mumbai .. Appellant
V/s.
Shree Jam Hosiery Works Pvt. Ltd., Mumbai .. Respondent

Mr. R.V. Desai with Mr. R. Ashokan for the Appellant
Mr. V.H. Patil with Ms. Asifa Khan for the Respondent

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.
DATED : 07.02.2005

P.C.:-

1. In all the above Appeals, the Revenue has challenged the common order dated 27.12.1999 passed by the Income Tax Appellate Tribunal. There is no dispute that as far as the assessment years 1965-66 to 1984-85 are concerned, the assessment orders had become final after the Assessment Officer had passed the assessment orders. The Revenue had not filed any Appeals against the same. The above assessments were sought to be re-opened on the basis of finding given by the Commissioner of Income Tax (Appeals) with regard to the assessment year 1988-89. The Commissioner of Income Tax (Appeals) clearly came to the conclusion that as far as the Assessment years 1965-66 to Assessment years 1984-85 are concerned, as they have become final, hence refused to interfere on the ground of limitation. The Income Tax Appellate Tribunal also concurred with the said order of the Commissioner of Income Tax (Appeals), on the ground that re-opening by way of re-assessment for the Assessment years 1965-66 to

1984-85 were not permissible as they were clearly barred by limitation.

(4)

2. Shri Desai, the learned counsel appearing on behalf of the Revenue submitted as follows:-

> "In the respectful submission of the Department, the C.I.T. (A) for the A.Y. 88-89 had given a finding that the interest must be charged on the basis of accrual and not on the basis of receipt. In the light of the direction, the Assessments were reopened for A.Y. in question. Therefore, the rule of limitation does not arise. In that behalf reliance is placed on the Hon'ble Supreme Court decision in 249 of ITR 789. In the said decision it is observed that there is an exclusion from the rule of limitation, when the proceedings are pursuant to the order or findings in the Appellate orders.
>
> The Judgment of the Hon'ble Supreme Court in 254 I.T.R. 772 in the case of K.M. Sharma Vs. I.T.O. does not apply."

3. Shri Patil, the learned counsel appearing on behalf of the Respondents brought to our notice a recent judgment of the Supreme Court in **K.M. Sharma v. Income-Tax Officer 254 I.T.R. 772**, wherein the Supreme Court had clearly considered the scope of re-opening of assessments, which is barred by law of limitation and after considering the entire law, the Supreme Court has clearly observed as under:-

> On a proper construction of the provisions of section 150(1) and the effect of its operation from April 1, 1989, we are clearly of the opinion that the provisions cannot be given retrospective effect prior to April 1, 1989, for assessments which have already become final due to the bar of limitation prior to April 1, 1989. The taxing provision imposing a liability is governed by the normal presumption that

it is not retrospective and the settled principle of law is that the law to be applied is that which is in force in the assessment year unless otherwise provided expressly or by necessary implication. Even a procedural provision cannot in the absence of clear contrary intendment expressed therein be given greater retrospectivity than is expressly mentioned

so as to enable the authorities to affect the finality of tax assessments or to open up liabilities, which have become barred by lapse of time. Our conclusion, therefore, is that sub-section (1) of section 150, as amended with effect from April 1, 1989, does not enable the authorities to reopen assessments, which have become final due to bar of limitation prior to April 1, 1989, and this position is applicable equally to re-assessments proposed on the basis of orders passed under the Act or under any other law."

4. In view of the aforesaid judgment of the Supreme Court, the law is clearly settled and in the present case, there is no question of re-assessment for the period 1964-65 to 1985-86 as they are clearly barred by limitation. Under these circumstances, we do not find any merit in the above Appeals, they all stand dismissed, however, with no order as to costs.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)